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1952.

File No. O/C.P.C./52
No. 50/52
Legal Department
G BRANCH

Subject:—Opinion on the Civil Procedure Code.

P:5
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Office of the R.L.A.

It is true that the authorization of Ration Shop No. M 271 was issued in the name of the Bombay Lokhand Bazar Kamgar Union but by a resolution of the said Union Shri Kadam was authorised to run the shop at his own expense. The Controller of Rationing was aware of this. On the 7th July 1949 the Union wrote to the Controller of Rationing to cancel the authorization of shop No. M 271 as Shri Kadam who was its Honorary Secretary severed his connection with the shop and asked for a new authorization. On the 18th July 1949 the Assistant Controller of Rationing (General) cancelled the authorisation and asked for the return of the documents and for a report of the stock. A copy of this order was sent to Shri Kadam for necessary action as suggested in the order. Further letters in this connection were also addressed to Shri Kadam and Shri Nimbalkar by the Rationing Officer (Factories). Thereafter an a new authorization was issued in the name of the Union. All these steps taken by the Controller of Rationing's office show that the Shop No. M 271 was actually conducted by Messrs. Kadam, and Nimbalkar. As one cheque for No. 753-9-0 for wheat was received by them for the stock returned by them, the second cheque of Rs. 302-5-0 ought to have been sent to them. Instead it was given to the Union. The Union has admitted in their letter that this cheque was in respect of return of the rice by Messrs. Kadam and Nimbalkar who were running the shop in the name of the Union and that they were prepared to hand over the amount of the cheque to Messrs. Kadam & Nimbalkar if the latter firm is prepared to settle accounts with them. The Union was asked by the Controller of Rationing to return the amount to Messrs. Kadam and Nimbalkar unconditionally and Shri Merchant the Advocate of Messrs. Kadam and Nimbalkar was informed accordingly In that letter Assistant Controller of Rationing Rationing (Retailers) has admitted that this amount was due to Messrs. Kadam & Nimbalkar. Even though severe action was threatened

against the Union they have neither paid up the amount nor are they prepared to pay up. In the letters to Shri Kamat the Advocate of the Union the Controller of Rationing's office has admitted the mistake in making payment to the Union. In view of all these complications it would be now difficult to defend the suit by taking the stand that the shop stood in the name of the Union and the amount was paid to the Union and Government are not in any way concerned with the settlement of accounts between the Union and Messrs. Kadam & Nimbalkar.

The Controller of Rationing must have taken the usual undertaking from the Union to carry out all the directions issued by the Controller of Rationing. Instead of defending the suit it would be advisable to make the Union return to the Controller of Rationing the amount paid to them by mistake and then pay it to Messrs. Kadam & Nimbalkar.

Sd/-P.M.Lad
16-8

Remembrancer of Legal Affairs.

U.R. to C. of R,, No. G-391 , dated the 16th August 1952.

Office of the R.L.A.

The question that is referred to this office for consideration is whether recovery by attachment and sale of the mill including the rice-huller would be permissib-le after getting a decree.

The mill (including the huller) is not covered by any of the exceptions to section 60, Civil Procedure Code and it is therefore liable to be attached and sold in execution of a Court's decree.

The District Magistrate, West Khandesh, has reported that the contractor possesses only moveable property; viz. chakki and huller and no other moveable or immoveable property. The Civil Supplies Department may consider the question of filing a civil suit against the party only if the chakki and huller are likely to fetch a substantial amount; otherwise it is not worth it.

Sd/- P.M.Lad
20-12

Remembrancer of Legal Affairs.

U.R. to C.S.D. No. G- 705 dated the 22nd December 1952.

S.C. 25/7

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